




Legal Protections & Remedies

Historic Anti-Slavery Prohibitions

6800 B.C.E. - First Recorded Instances of Slavery

- ▶ 1787 - First Abolitionist Movement
 - ▶ 1833 - Slavery Abolition Act outlaws slavery in British colonies (inc. Canada)
 - ▶ 1863 - The Emancipation Proclamation frees all slaves in Confederate States
 - ▶ 1865 - 13th Amendment of the U.S. Constitution
 - ▶ 1910 - International Convention for Suppression of the White Slave Trade
 - ▶ 1926 - League of Nations Slavery Convention
 - ▶ 1948 - Article 4 of the Universal Declaration of Human Rights
 - ▶ 1956 - UN Supplementary Convention on the abolition of slavery, the slave trade and institutions and practices similar to slavery
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Human Trafficking Law

▶ International

- UN Trafficking Protocol, 1999 (came into force in 2003)

▶ Domestic


- Federal - US Code, Title 22, Chapter 78
 - US Trafficking Victims Protection Act (TVPA), 2000
 - US Trafficking Victims Protection Reauthorizations Act, 2003, 2005 and 2008
- State
 - Human Trafficking is now a crime in 49 US states, including Wisconsin.

Trafficking Victims Protection Act of 2000 (TVPA)

Areas of Focus:

- ▶ Prevention
 - *Public awareness and education*
- ▶ Protection
 - *T visa, certification, benefits and services to help victims rebuilt their lives*
- ▶ Prosecution
 - *Created Federal crime of trafficking, new law enforcement tools and efforts*

TVPA: How Law Protects Victims

- Enables trafficking victims to obtain medical care, witness protection, other types of social service assistance
 - Enables victims to obtain legal immigration status
 - Criminalizes trafficking
 - Permits prosecution where victim's service compelled by confiscation of documents
 - Increases prison terms for all slavery violations from 10 years to 20 years; adds life imprisonment for death, kidnapping or sexual abuse of victim
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TVPA Reauthorized in 2008

- Federal government authorized more than \$200 million to continue domestic fight against human trafficking
- New law strengthens legal elements of TVPA
 - *Sex and labor trafficking now considered offenses under RICO statute*
 - *Encourages nation's 21,000 law enforcement agencies to investigate cases of trafficking*
 - *Can now meet “means” element through either knowledge or reckless disregard*

Immigration Remedies

Continued Presence

Temporary immigration relief to potential witnesses who are identified as victims of severe forms of trafficking

- Goal is to provide trafficking victims stability while they cooperate with law enforcement in investigation and prosecution of trafficking offense
 - Valid for one year but renewable
 - Provides work authorization and access to federal benefits
 - Only law enforcement agencies can request this designation
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T Nonimmigrant Status Eligibility

“T Visa”

Four elements:

- Victim of severe form of trafficking (sex or labor)
- Has complied with any reasonable request for assistance in investigation or prosecution of crime (does not apply to child victims or victims who are severely traumatized)
- Physically in U.S. on account of trafficking
- Will suffer extreme hardship involving unusual and severe harm if removed

Applicant is “admissible” to the U.S.

Applicant has not engaged in trafficking of others

"Severe Forms of Trafficking in Persons" means:

- (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(*Victims of Trafficking and Violence Prevention Act of 2000* can be found at www.ojp.usdoj.gov/vawo/laws/vawo2000/)

T-Visa Pros & Cons

PROS

✧ T nonimmigrant status for 4 years, ability to apply for permanent residency (after 3 years) and eventually citizenship

✧ Can include family members in the petition

✧ In some states public benefits are available to trafficking victims to stabilize their living situation

CONS

✧ Harder to detect as victims may be even less willing due to greater danger from abuser

✧ Must prove extreme hardship if removed

✧ Cannot apply if trafficking occurred before October 28, 2000

Law Enforcement Certification

- ▶ Law enforcement agency certification that individual:
 - is a victim of a severe form of trafficking
 - has complied with any reasonable request for assistance (unless under 18 or traumatized)
- ▶ Certifying agencies include Department of Homeland Security, Department of Labor, ICE, Department of Justice (and other prosecutors)
- ▶ Form I-914 (B)

Makes T Visa petition MUCH stronger

More Immigration Options for Survivors

Special Immigrant
Juvenile Status

U Nonimmigrant Status
“U Visa”

Gender based Asylum

Deferred Action for
Childhood Arrivals

U Nonimmigrant Status

“U Visa”


under INA §101(a)(15)(u)

✧ Victim of a qualifying crime

- | | | |
|--------------------------------|--------------------------|----------------------------------|
| ✧ Abduction | ✧ Incest | ✧ Rape |
| ✧ Abusive Sexual
Contact | ✧ Involuntary Servitude | ✧ Sexual Assault |
| ✧ Blackmail | ✧ Kidnapping | ✧ Sexual Exploitation |
| ✧ Domestic Violence | Manslaughter | ✧ Slave Trader |
| ✧ Extortion | ✧ Murder | ✧ Stalking |
| ✧ False Imprisonment | ✧ Obstruction of Justice | ✧ Torture |
| ✧ Genital Female
Mutilation | ✧ Peonage | ✧ Trafficking |
| ✧ Felonious Assault | ✧ Perjury | ✧ Witness Tampering |
| ✧ Hostage | ✧ Prostitution | ✧ Unlawful Criminal
Restraint |
| | | ✧ Other Related Crimes |

This list is a guideline not inclusive of all qualifying crimes

U Nonimmigrant Status Requirements

- ✧ Victim of a qualifying crime
 - ✧ Has information about the crime
 - ✧ Cooperation or “helpful” to law enforcement in the investigation or prosecution of the crime
 - ✧ Suffered substantial mental or physical abuse as a result of the criminal activity
 - ✧ Admissible to the U.S. or eligible for an inadmissibility waiver
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U Nonimmigrant Status Benefits

- ✧ Temporary legal status granted for 4 years
- ✧ Opportunity to apply for family members
- ✧ Eligible for work authorization upon approval of U Status
- ✧ Can apply for Permanent Residency after accruing 3 years of U Status
 - ✦ Must show ongoing cooperation with law enforcement + no inadmissibilities
- ✧ Can apply for Citizenship after 5 years of Permanent Residency

Special Immigrant Juvenile Status -SIJS-

under INA § 101(a)(27)(j)

- ✧ Victim must be unmarried and under 21 years
- ✧ Must have a special juvenile court order finding that she/he cannot be reunified with one or both parents because of abuse, neglect, abandonment OR a similar basis in law
 - ✦ Cannot initiate court action for the purpose of SIJS status
- ✧ It is not in the juveniles best interest to return to her or his country of origin

SIJS Pros & Cons

PROS

- ✧ Allows the child to remain in the US and eventually obtain lawful permanent residency (green card)
- ✧ Provides employment authorization allowing the child to work (and serves as a govt. issued ID card)

CONS

- ✧ The child must be under the jurisdiction of the juvenile court or a state agency – many children won't formally enter these systems.
- ✧ Timing is important! Must identify the child while involved in qualifying court proceedings before case is closed.
- ✧ Family members can't be included

Asylum - Gender, Political, Sexual -

under INA § 101(a)(42)(A)

- ✧ Victim must be outside of her country of nationality or last habitual residence
- ✧ Must be unwilling or unable to return to and avail herself of protection from that country
- ✧ Will not return due to persecution or a well founded fear of persecution
- ✧ The persecution must be based on race, religion, nationality, political opinion or membership in a particular social group
 - ✧ e.g. female genital mutilation, sexual orientation, honor killings, accepted DV

Asylum Pros & Cons

PROS

- ✧ Can apply for Permanent Residency with one year status as asylee
- ✧ Can apply for family members to join you in US if asylum approved
- ✧ Process and decisions are usually quick

CONS

- ✧ If denied and out of status automatically referred to Immigration Court for removal
- ✧ Hard to prove that “you” are in danger

Civil and Criminal Remedies

Crime Victim Rights

- ▶ The right to a timely disposition of the case
- ▶ Notification of court proceedings
- ▶ The opportunity to attend court proceedings
- ▶ The opportunity to confer with the prosecution
- ▶ The opportunity to make a statement to the court at disposition
- ▶ The right to receive information about the outcome of the case and the release of the accused
- ▶ The right to seek crime victim compensation [a program which may in some cases reimburse victims for certain expenses directly related to the crime]
- ▶ The right to seek restitution from the offender
- ▶ The right to reasonable protection from the accused

Criminal Affirmative Defenses:

§939.46(1m)

- **939.46 (1m)** A victim of a violation of s. 940.302 (2) or 948.051 has an affirmative defense for any offense committed as a direct result of the violation of s. 940.302 (2) or 948.051 without regard to whether anyone was prosecuted or convicted for the violation of s. 940.302 (2) or 948.051.

2013 Wisconsin Act 362



2013 Wisconsin Act 362

- ▶ Creates a procedure whereby a victim of trafficking for the purpose of a commercial sex act may request a court to vacate a conviction, adjudication, or finding, or to expunge the record for a violation of prostitution.
 - Critical for victims seeking employment and housing after wrongful convictions
 - Takes into account the delayed identification and self-identification of victims

After 2013 Act 362...

The first cases



Questions?

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